

July 8, 2014

Christopher E. Platten  
Wyllie, McBride, Platten & Renner  
2125 Canoas Garden Avenue, Suite 120  
San Jose, CA 95125

**RE: Demand to Bargain Over Proposed Retirement Board Governance Charter Amendment**

Dear Chris:

We are in receipt of your letter dated July 2, 2014, demanding to meet and confer over the proposed Retirement Board Governance Charter Amendment. As you know, the City Council must approve the ballot measure language at its August 5, 2014, Council meeting in order to have the Charter amendment on the November 2014 ballot. In addition, a council memo must be issued 10-14 days prior to August 5<sup>th</sup> with the final ballot measure language.

We have provided Local 230 with various drafts of the ballot measure since June 5, 2014, and have not received any specific concerns from Local 230 about those proposals until we received your letter dated July 2, 2014. Moreover, your letter does not identify any specific negotiable impact of the proposed Charter language. In fact, all of the concerns you have raised involve language which is consistent with current law or practice and none of them represent a change from the status quo. We address your concerns individually below.

First, you stated that the measure permits the City to collapse existing retirement boards of administration into one board. The draft ballot measure indicates that the City Council by ordinance shall establish one or more boards. The Council already has the authority to establish retirement boards and has created two such boards. The proposed Charter language would not change the status quo. The two existing retirement boards would remain in place under the Charter. If in the future there are further discussions regarding combining the boards into one board, this would be discussed with all stakeholders, including the unions, and established by ordinance. To the extent that there is a meet and confer obligation over such changes, it would exist at that time.

Second, you raise a concern that the stipend for Board members "appear to rest in the hands of a non-board Salary Setting Commission, yet the costs of the payments fall upon Plan assets." This is not correct. The proposed Charter language does not change the City Council's ultimate authority to set the stipend for Board members. The Salary Setting Commission would make a *recommendation* to the City Council, who would then set the stipend for the non-employee Board members. The City Council would continue to set the stipend amount, which would continue to be paid out of the Retirement Fund pursuant

to San Jose Municipal Code Section 2.08.1270. In addition, you raised a concern with the City exercising control over the budget to be approved by the Board. This is also not a change. The City Council currently approves the Operating Budget for the Department of Retirement Services and the intent of the language in the ballot measure is to maintain this authority.

Lastly, you raised a concern as to whether certain proposed clauses are in conflict with current and future Board member fiduciary responsibilities under the California Constitution and the provisions of the Pension Protection Act. We wanted to make sure that you were aware of the San Jose Municipal Code Section 3.36.540 which states that the City Charter and Municipal Code shall be interpreted consisted with the California Constitution and the Pension Protection Act. We are unclear as to which clauses you are referring to that you believe may be in conflict and request more specific information about this concern.

In summary, the concerns you have raised are not changes to the current authority or practice. If you believe that we are misinterpreting your concerns, we request that you provide us with additional information and we hope given the short time frame, you are able to do so quickly.

Sincerely,



Alex Gurza  
Deputy City Manager

c: Jennifer Schembri, Deputy Director of Employee Relations  
Joel Phelan, President of Local 230